

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon

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## Race Discrimination

In an employment action alleging race discrimination, plaintiff brought claims pursuant to Title VII of the Civil Rights Act of 1964, and wrongful discharge. Upon defendant's motion, Judge Aiken dismissed plaintiff's claim for wrongful discharge. The court found that plaintiff alleged the same operative facts in support of all claims, and plaintiff conceded that § 1981 provides remedies equivalent to those available under common law.

Lawrence v. Louis & Co.,  
CV 05-1651-AA  
(Opinion, February 2, 2006)  
Plaintiff's Counsel: Craig Crispin  
Defense Counsel: Clarence Belnavis

## 1983 - Civil Rights

Anderson served several months in the Yamhill County jail for violating his probation. No term of post-prison supervision (PPS) was imposed. Defendants knew

this. Nevertheless, following Anderson's release, they had him arrested, claiming he had violated his PPS by not reporting and claiming he had absconded. Defendants also denied Anderson's request for an attorney, and then jailed him for 30 days as punishment for the alleged violations of his PPS, without any judicial involvement.

Following his release, Anderson brought suit. Judge Panner denied defendants' motion for summary judgment  
Anderson v. Yamhill Co.,  
CV 04-908-PA  
(Opinion, Dec. 9, 2005)  
Plaintiff's Counsel: Leonard Berman  
Defense Counsel: Keith Pitt

## Habeas - Gun Enhancement

Petitioner filed a Habeas Petition for ineffective assistance of counsel, asserting that his attorney should have pursued eligibility for sentencing

under 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2 (the safety valve), which allows for guidelines sentencing without regard to statutory minimums. Petitioner was sentenced originally to the statutory minimum.

Judge Haggerty conducted an evidentiary hearing to determine whether petitioner would have been eligible for the safety valve. Petitioner was able to establish, by a preponderance of the evidence, that the gun was not possessed in connection with the marijuana operation. Judge Haggerty found that petitioner would have been eligible for the safety valve, and the failure to investigate or pursue the safety valve fell below the acceptable standard of care owed by counsel. The habeas petition was granted and petitioner was resentenced within the original guidelines sentencing range.  
U.S. v. Boothroyd, 02-342-HA  
(Opinion December 9, 2005)

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Petitioner's Counsel:  
Francesca Freccero  
Respondent's Counsel:  
Charles W. Stuckey

### Constitutional Law

Plaintiffs filed suit against the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and Governor Kulongoski challenging the legality of a tribal gaming facility. Plaintiffs argued that the Oregon Constitution prohibited the establishment of casinos, and that the Governor exceeded his authority in negotiating a gaming compact with the Tribes. Judge Aiken granted defendants' motion for summary judgment finding that the plaintiffs lacked standing to challenge the Tribes' gaming facility, and that the Tribes were immune from suit and an indispensable party to the action. Further, the court found that the Oregon Constitution did not prohibit the specific type of gaming activity permitted under the Tribes' gaming Compact, and therefore the Compact permitted lawful gaming activity under the Indian Gaming Regulatory Act and Oregon law. Finally, the court ruled that the Governor possessed the authority to

negotiate and execute gaming compacts with Indian tribes.

Dewberry v. Kulongoski,  
CV 04-6175-AA  
(Opinion, Dec. 21, 2005)  
Plaintiffs' Counsel: Kelly  
Clark

Defense Counsel: Katherine  
Georges, Bruce Green

### Insurance Law

Judge Aiken granted plaintiff's motion for summary judgment as to plaintiff's second claim for relief finding plaintiff statutorily discharged from liability to defendant Simmons. The court also granted summary judgment for plaintiff as to defendant Simmons' counterclaims. Life Ins. Co. of N. America v. Simmons, et al.,  
CV 04-6204-AA  
(Opinion, Dec. 7, 2005)  
Plaintiff's Counsel:  
Katherine Somervell  
Defense Counsel: James  
Nelson

### Recent Jury Verdicts:

Ward v. Bend Metro Parks  
& Recreations Dist., et al.,  
CV 03-481-KI, 1/7/06  
Defense verdict on plaintiff's  
claims of sex discrimination,  
First Amendment retaliation,  
and related claims. Plaintiff

was the executive director of the district who was terminated by the board under a "without cause" provision in her contract after several new board members were elected.

McAllister v. Trendwest,  
CV 03-1662-JO, 11/3/05  
Defense verdict on plaintiff's  
claims of retaliation and  
state wrongful discharge  
claim.  
Further, Judge Jones denied  
defendant's attorney fee  
request but awarded  
defendant's costs in excess  
of \$13,000.

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